IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re Personal Restraint Petition of JACQUELINE MARIE FLETCHER, Petitioner.	)	NO. 62290-1-I
	)	DIVISION ONE
	)	UNPUBLISHED OPINION
	)	FILED: March 1, 2010

Lau, J. — In this personal restraint petition (PRP), Jacqueline Fletcher seeks to withdraw her 1994 guilty pleas to two counts of second degree robbery because the plea statement form and judgment and sentence misstated the maximum possible fine. She therefore contends that the petition is not time barred under RCW 10.73.090 since the judgment and sentence is facially invalid and the sentencing judge failed to give her notice of the one-year time bar as required under RCW 10.73.110. Because the technical misstatements about the maximum fines in Fletcher's plea statement form and judgment and sentence had no effect on her substantive rights and she received notice of the one-year time bar, we dismiss the PRP as untimely.

FACTS

On December 20, 1993, Jacqueline Fletcher pleaded guilty to two counts of second degree robbery. The plea agreement form,[1] dated October 26, 1993, correctly

states the maximum penalty for each robbery count—"not more than 10 years and/or $20,000 fine."[2] State's Resp. to Personal Restraint Pet., App. B. But Fletcher's statement of defendant on plea of guilty (plea statement form),[3] dated December 20, 1993, mistakenly states, "The crime with which I am charged carries a maximum sentence of 10 years and a $25,000 fine." Personal Restraint Pet., App. A. Finally, the judgment and sentence, entered on January 14, 1994, mistakenly states the maximum term for each count as "10 yrs and or $10,000." Personal Restraint Pet., App. B. The correct maximum fine for each count is $20,000. RCW 9A.20.021(1)(b). At sentencing, the court imposed 25 months' confinement, $714.08 in restitution, and a $100 victim assessment fee, but imposed no fine. As a result of the 1994 convictions, a subsequent multiple counts robbery conviction and a persistent offender finding, Fletcher is currently serving a life sentence. She brings this PRP collaterally attacking her 1994 judgment and sentence.

ANALYSIS

Facial Invalidity

Fletcher first argues that RCW 10.73.090's time bar preventing PRPs more than one year after the judgment and sentence is entered does not apply because her judgment and sentence is facially invalid. The State responds that the judgment and sentence is not facially invalid because the sentence imposed was not in excess of

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[1] The plea agreement was prepared by the State.

[2] And the State's written sentence recommendation included in the plea agreement recommended that no fine be imposed. Br. of Respondent, Appendix B.

[3] The plea statement form was prepared by Fletcher's counsel.

statutory authority despite "typographical errors."

Under RCW 10.73.090(1), a petitioner must bring a PRP within one year "after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction." "'Invalid on its face' means the judgment and sentence evidences the invalidity without further elaboration." In re Pers. Restraint of Hemenway, 147 Wn.2d 529, 532, 55 P.3d 615, (2002). In making that determination, courts may consider documents signed as part of a plea agreement if they are relevant to assessing the validity of a judgment and sentence. Hemenway, 147 Wn.2d at 532; In re Pers. Restraint of Stoudmire, 141 Wn.2d 342, 353, 5 P.3d 1240 (2000).

In In re Personal Restraint of McKiearnan, 165 Wn.2d 777, 781, 203 P.3d 375 (2009), the petitioner argued that the one-year limit did not bar consideration of his PRP because the judgment and sentence form misstated the maximum possible sentence. Specifically, the judgment and sentence listed the maximum sentence as 20 years to life imprisonment, when the actual maximum was simply life imprisonment. McKiearnan, 165 Wn.2d at 780. The court held that the judgment and sentence was facially valid because "[e]ven as misstated, McKiearnan was aware of the maximum amount of time he could serve in confinement." McKiearnan, 165 Wn.2d at 783. The court elaborated, stating, "To be facially invalid, a judgment and sentence requires a more substantial defect than a technical misstatement that had no actual effect on the rights of the petitioner." McKiearnan, 165 Wn.2d at 783.

This case is analogous to McKiearnan. Fletcher, like McKiearnan, was

convicted and a judge imposed a sentence that was statutorily authorized. And because the court imposed no fine, the misstatement here was "a technical misstatement that had no actual effect on the rights of the petitioner." McKiearnan, 165 Wn.2d at 783. Finally, Fletcher's plea agreement states the correct fine of $20,000. Therefore, like McKiearnan, she was aware of the maximum fine. Because Fletcher was aware of the maximum possible fine and because the court imposed no fine, she "was not substantively misinformed as to the maximum sentence." McKiearnan, 165 Wn.2d at 779. Accordingly, the judgment and sentence is not invalid on its face and RCW 10.73.090's one-year time bar applies. McKiearnan, 165 Wn.2d at 783.

Fletcher counters that In re Personal Restraint of Bradley, 165 Wn.2d 934, 205 P.3d 123 (2009) supports her position. But in Bradley, the State conceded that the judgment and sentence was invalid on its face and the court therefore never analyzed facial invalidity. Bradley, 165 Wn.2d at 938–39. Here, the State has not conceded facial invalidity and, as such, McKiearnan controls. Furthermore, in Bradley the error was an incorrect offender score and a sentence that was outside the statutorily authorized sentencing range. See Bradley, 165 Wn.2d at 937. Thus, the error in Bradley was more than the "technical misstatement" at issue here. See McKiearnan, 165 Wn.2d at 783. Under McKiearnan, Fletcher's facial invalidity challenge fails.[4]

[4] Fletcher also cites In Re Personal Restraint of Goodwin, 146 Wn.2d 861, 50 P.3d 618 (2002) for the principle that underlying plea documents can be used to determine the facial validity of a judgment and sentence. That is true but does not change the fact that the error complained of here "had no actual effect on the rights of the petitioner" and, thus, does not constitute a facial invalidity. McKiearnan, 165 Wn.2d at 783; contra Goodwin, 146 Wn.2d at 868, 877 (erroneous inclusion of juvenile offenses in calculation of offender score resulted in a sentence in excess of statutory

Notice of Time Bar

Fletcher claims that her PRP is timely because the sentencing court failed to notify her about RCW 10.73.090's one-year time bar.[5] RCW 10.73.110[6] requires, "At the time judgment and sentence is pronounced in a criminal case, the court shall advise the defendant of the time limit specified in RCW 10.73.090 and 10.73.100." Thus, the time bar in RCW 10.73.090(1) is conditioned on compliance with RCW 10.73.110. State v. Golden, 112 Wn. App. 68, 78, 47 P.3d 587 (2002) (citing In re Pers. Restraint of Vega, 118 Wn.2d 449, 451, 823 P.2d 1111 (1992)).

The State's supplemental appendices show that on January 14, 1994, the same judge sentenced Fletcher on the second degree robbery convictions and a forgery conviction. The forgery conviction court file contained two "Notice of Rights on Appeal and Certificate of Compliance with CrR 7.2(b); Superior Court Rules." Both notices are signed by Fletcher acknowledging receipt and dated January 14, 1994. They state,

> 6. You are advised that pursuant to RCW 10.73.090 you have one (1) year from this date to file a petition or motion for collateral attack on the judgment herein. However, you are also advised that pursuant to RCW 10.73.100 that the one (1) year time limit does not apply to certain grounds as are more particularly set forth therein. (Said statutes are set forth on the

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authority).

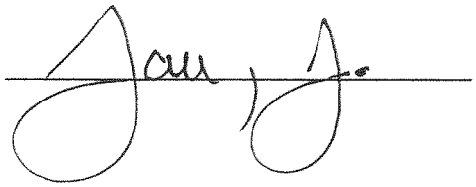
[5] We note both parties filed their briefs in this court before the State submitted its supplemental appendices.

[6] RCW 10.73.110 was enacted in 1989. Laws of 1989, ch. 395, § 4. Thus, it applied to Fletcher's sentencing proceedings in 1994.

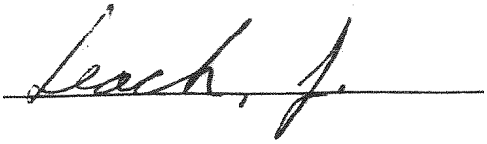
backside hereof.)

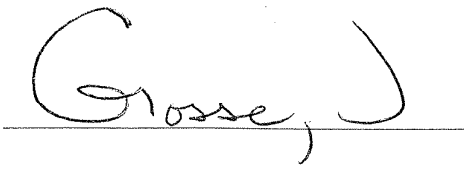
King County's Suppl. Apps., Apps. B, C. And the court clerk's minutes also confirm that at the time of sentencing, Fletcher signed and acknowledged receipt of the notices. King County Suppl. Apps., App. A. Based on this undisputed record, we conclude that Fletcher received notice of the time bar as required by RCW 10.73.110.

Because Fletcher received notice of the time bar and fails to demonstrate a facial invalidity in her judgment and sentence, we dismiss the PRP as untimely.[7]



WE CONCUR:





[7] The supplemental declaration of Fletcher's counsel asserting that the trial court did not inform her of the maximum possible fine does not affect our conclusion. See Hemenway, 147 Wn.2d at 531–32 (judgment and sentence that imposed community placement "for the period of time provided by law" was facially valid despite fact that neither the plea agreement nor the court informed the defendant that he could be subject to community placement.).